

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:06-CV-310-F

UNITED STATES OF AMERICA,       )  
                    Plaintiff,        )  
  )  
                    vs.                )  
  )  
SHELBY DAVIS, et al.,            )  
                    Defendants.        )

ORDER

This matter is before the court upon the United States of America's Motion for Default Judgment [DE-85].

**I. PROCEDURAL HISTORY**

On August 7, 2006, the United States of America initiated this action by filing a Complaint against the following defendants: Shelby Davis, D. Bernard Alston, Robert K. Catherwood, Bradley Electrical Contractors, Inc., Interior Distributors, Inc., Hedgecock Builders Supply of Greensboro, Coles Backhoe Service, Inc., Lewis Electric and Plumbing Co., Wadsworth Congregational Church, Unique Floor Coverings, Inc., Chamblee and Strickland Land Surveyors, Clarence Williams, Darryon Smith and Wife, Gwendolyn Smith, and Allpro Insulation Company. The Complaint seeks, *inter alia*, a declaration from the court that the Trustee's Deed to Shelby Davis recorded in Book 821, Page 654 in the Warren County Registry is void ab initio. Compl. [DE-1] at unnumbered p. 5.

After initiating this action, the United States voluntarily dismissed Robert K. Catherwood, Allpro Insulation Company, and Coles Backhoe Service, Inc. On December 27, 2006, Defendant D. Bernard Alston filed an Answer. On February 7, 2007, the Clerk of Court filed an Entry of Default as to Defendant Shelby Davis. On February 12, 2007, the Clerk of Court filed an Entry of Default as to Defendants Bradley Electrical Contractors, Inc., Interior Distributors, Inc., Hedgecock

Builders Supply of Greensboro, Lewis Electric and Plumbing Co., Wadsworth Congregational Church, Unique Floor Coverings, Inc., Chamblee and Strickland Land Surveyors, Clarence Williams, Darryon Smith and Gwendolyn Smith. D. Bernard Alston, the lone defendant to have filed an Answer, filed a verified Notice of "Withdrawal of Answer and Consent to Default Judgment" [DE-77] on May 22, 2008.

That same day, the United States filed the Motion to File Dispositive Motion Outside of Deadline [DE-78] and Motion to Remove Trial from Court's Calendar [DE-79]. In an order filed on May 30, 2008, the undersigned allowed the United States' Motion to File Dispositive Motion, and the Motion to Remove from Trial From Court's Calendar. The court directed the Clerk of Court to file an Entry of Default as to D. Bernard Alston, and to file the United States' Motion for Default Judgment. The Clerk of Court has done so, and the Motion for Default Judgment is now before the court.

## II. ANALYSIS

Based upon the record, the court finds that it has subject jurisdiction over this matter pursuant to 28 U.S.C. § 1345. Service on Defendant was obtained in accordance with Rule 4 of the Federal Rules of Civil Procedure,<sup>1</sup> and all of the Defendants were, at the time of the institution of this action, domiciled within North Carolina. Accordingly, this court has personal jurisdiction over Defendants. The Clerk of Court filed entry of default as to Shelby Davis on February 7, 2007; as to

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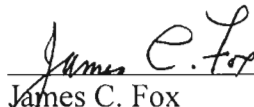
<sup>1</sup> The record shows that Defendants Shelby Davis and D. Bernard Alston were served personally. *See* Proof of Service [DE-34]; Proof of Service [DE-38]. Defendants Hedgecock Building Supply Company of Greensboro, Cole's Backhoe Service, Inc., Lewis Electric & Plumbing Co., Robert K. Catherwood, Bradley Electrical Contractors, Inc., Interior Distributors, Inc., Wadsworth Congregational Church, Unique Floor Coverings, Inc., Chamblee and Strickland Land Surveyors, Clarence Williams, Darryon Smith, Gwendolyn Smith, and Allpro Insulation Company were served via certified mail. *See* Notice of Service [DE-35].

Defendants Clarence Williams, Gwendolyn Smith, Darryon Smith, Chamblee and Strickland Land Surveyors, Lewis Electric & Plumbing Company, Unique Floor Coverings, Inc., Hedgecock Builders Supply of Greensboro, Bradley Electrical Contractors, Inc., Wadsworth Congregational Church, and Interior Distributor's Inc., on February 12, 2007, and as to Defendant D. Bernard Alston on May 30, 2008. The court concludes that the procedural requirements for entry of default judgment have been met, and that default judgment is proper under Rule 55(b) of the Federal Rules of Civil Procedure.

Therefore, the United States' Motion for Default Judgment [DE-85] is ALLOWED. The Clerk of Court is DIRECTED to enter judgment against Defendants Shelby Davis, Bradley Electrical Contractors, Inc., Interior Distributors, Inc., Hedgecock Builders Supply of Greensboro, Lewis Electric and Plumbing Co., Wadsworth Congregational Church, Unique Floor Coverings, Inc., Chamblee and Strickland Land Surveyors, Clarence Williams, Darryon Smith, Gwendolyn Smith, and Bernard Alston. The United States indicates that it is not seeking monetary relief; therefore none is ordered. Based on the allegations in the Complaint, the court DECLARES that the Trustee's Deed to Shelby Davis recorded in Book 821, Page 654 in the Warren County Registry is void ab initio. The Clerk of Court is DIRECTED to mail a certified copy of this order to the Warren County Register of Deeds.

SO ORDERED.

This the 5<sup>th</sup> day of June, 2008.

  
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James C. Fox  
Senior United States District Judge